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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 09/847,624  | 05/03/2001  | Jeffrey M. Voas      | CIG-104                 | 5601             |
| 28970   | 7590        | 07/14/2004           | EXAMINER                |                  |
| SHAW PITTMAN<br>IP GROUP<br>1650 TYSONS BOULEVARD<br>SUITE 1300<br>MCLEAN, VA 22102 |             |                      | IQBAL, NADEEM           |                  |
|   |             |                      | ART UNIT                | PAPER NUMBER     |
|   |             |                      | 2114                    |                  |
|   |             |                      | DATE MAILED: 07/14/2004 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/847,624

Applicant(s)

VOAS ET AL.

Examiner

Nadeem Iqbal

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

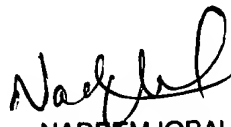
- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-19 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-15 is/are rejected.
- 7) ☐ Claim(s) 4-7, 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

  
NADEEM IQBAL  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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***Response to Amendment***

This office action is in response to an amendment filed on April 27, 2004.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1-3, 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel et al., (U.S. Patent Number 5,548,718) in view of D'Souza (U.S. Patent Number 6,453,468).
4. As per claim 1, Siegel teaches (abstract, lines 1-3) a system and method for determining software reliability. He teaches (col. 4, lines 30-33) a mapping mechanism that receives tester data from the tester spreadsheet, an operational profile from the user spreadsheet, and failure data from the failure database. He thus teaches limitations pertain to establishing a software laboratory, receiving software product, and instrumenting the software product to collect a plurality of usage data and plurality of failure data. He also teaches (col. 5, lines 20-25) to create

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an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users that records each command and how long the command took to execute. He thus teaches limitations pertain to providing the software product to a plurality of users, receiving the plurality of usage data and plurality of failure data from each of the plurality of users. He also teaches (col. 5, lines 24-26) that an operational profile is created from the user data. He thus teaches limitations analyzing the plurality of usage data and the plurality of failure data and building an operational profile. He does not explicitly disclose issuing a certificate of reliability to the software product based on the result from the analyzing. D'Souza teaches (col. 7, lines 27-29) a method of ascertaining a certification level associated with each of the software module and also assigns a first certification level and a second certification level. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Siegel's method to include the certification levels as taught by D'Souza to be able to issue a certificate of reliability to the software product. This is because Siegel already method for determining software reliability the inclusion with D'Souza would clearly provides desirable advantage of assigning a certification level, therefore would motivate a person of ordinary skill in the art for the stated inclusion.

5. As per claim 2, D'Souza teaches (col. 7, lines 27-29) a method of ascertaining a certification level associated with each of the software module and also assigns a first certification level and a second certification level. He thus provides a software certification laboratory which is independent of a vendor that provides the software product.

6. As per claim 3, Siegel also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various

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groups of users. He thus teaches that an operational profile is returned from the software certification laboratory to a vendor that provides the software product for reference.

***Allowable Subject Matter***

7. Claims 17-19 are allowed.

8. Claims 4-7, 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. As per claim 8, Siegel substantially teaches the claimed invention as disclosed related to claim 1 above. He also teaches (col. 4, lines 30-33) a mapping mechanism that receives tester data from the tester spreadsheet, an operational profile from the user spreadsheet, and failure data from the failure database. He thus teaches limitations pertain to a software certification laboratory, receiving software product, and instrumenting the software product to collect a plurality of usage data and plurality of failure data. He also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users that records each command and how long the command took to execute. He thus teaches limitations pertain to providing the software product to a plurality of users, receiving the plurality of usage data and plurality of failure data from each of the plurality of users. He also teaches (col. 5, lines 24-26) that an operational profile is created from the user data. He thus teaches limitations analyzing the plurality of usage data and the plurality of failure data and building an operational profile. He does not explicitly disclose issuing a certificate of reliability to the software product based on the result from the analyzing. D'Souza teaches (col. 7, lines 27-29) a method of ascertaining a certification level associated

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with each of the software module and also assigns a first certification level and a second certification level. It would have been obvious to a person of ordinary skill in the art to modify Siegel's method to include the certification levels as taught by D'Souza to be able to issue a certificate of reliability to the software product. This is because Siegel already method for determining software reliability the inclusion with D'Souza would clearly provides desirable advantage of assigning a certification level, therefore would motivate a person of ordinary skill in the art for the stated inclusion.

10. As per claim 9, He also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users that records each command and how long the command took to execute. He thus would clearly include a testing tool to collects information about software behavior, since he teaches to a recording mechanism that records each command and how long the command took to execute.

11. As per claim 10, D'Souza teaches (col. 7, lines 27-29) a method of ascertaining a certification level associated with each of the software module and also assigns a first certification level and a second certification level. He thus provides a software certification laboratory which is independent of a vendor that provides the software product.

12. As per claim 11, Examiner takes official notice for the limitation pertain to a digital signature on the software product, since it's a standard software industry practice to provide a digital signature on a software product for recognition and for authenticity of the product.

13. As per claim 12, It is well know practice in the software industry to provide a digital signature on a software product for recognition and for authenticity of the product. Therefore

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would motivate a person of ordinary skill in the art to include in a software product that is verified by a vendor.

14. As per claims 13 & 14, Siegel also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users. He thus teaches that an operational profile is returned from the software certification laboratory to a vendor that provides the software product for reference.

15. As per claim 15, Siegel also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users. He thus teaches provides motivation to collect the information periodically.

#### ***Response to Arguments***

16. Applicant's arguments with respect to claims 1 & 8 have been considered but are moot in view of the new ground(s) of rejection. Examiner has used new grounds of rejection pertaining to these independent claims utilizing a new reference Siegel et al., in view of previously applied reference of D'Souza, therefore arguments pertaining to Gil reference are now moot, and only arguments pertaining to D'Souza reference would be addressed. As per Applicant's arguments pertaining to D'Souza does not issue a certification based on analyzing the plurality of usage data and the plurality of failure data that are collected when the software module is being executed. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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17. Examiner further contends that Siegel teaches (col. 4, lines 30-33) a mapping mechanism that receives tester data from the tester spreadsheet, an operational profile from the user spreadsheet, and failure data from the failure database. He thus teaches to the software product to collect a plurality of usage data and plurality of failure data. He also teaches (col. 5, lines 20-25) to create an operational profile, a release of the software product to be tested is distributed with a recording mechanism to various groups of users that records each command and how long the command took to execute. He thus teaches to build an operational profile for a software product and with the inclusion with D'Souza would clearly provide motivation to a person of ordinary skill in the art of assigning a certification level.

### *Conclusion*

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

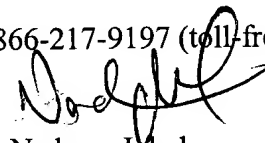


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadeem Iqbal whose telephone number is (703)-308-5228. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W Beausoliel can be reached on (703)-305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nadeem Iqbal  
Primary Examiner  
Art Unit 2114

NI